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UNITED STATES TRUSTEE
KENNETH M. MISKEN
ASSISTANCE UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

In re:

**THE ORIGINAL MOWBRAY'S TREE
SERVICE, INC.,**

Debtor.

CASE NUMBER: 8:24-bk-12674 TA

CHAPTER 11

**APPLICATION FOR ORDER APPROVING
APPOINTMENT OF EXAMINER**

[NO HEARING REQUIRED]

The United States Trustee hereby applies to the Court pursuant to Fed. R. Bankr. P. 2007.1 for an Order Approving Appointment of Examiner, and in support thereof, states as follows:

1. The United States Trustee has appointed Don Fife as Examiner in the above captioned case on March 18, 2025.

2. Counsel for the United States Trustee has consulted with the following parties in interest regarding the appointment of the Examiner:

- a. Counsel for the Debtor, Robert S. Marticello;
- b. Counsel for Jaime Rodriguez and Ana Lidia Gomez, Ahren A. Tiller;
- c. Counsel for Pathward, National Association, Thomas E. Shuck;

- d. Counsel for Phoenix Traffic Management Inc., Roye Zur;
- e. Counsel for Mowbray Waterman Property, LLC, Roye Zur;
- f. Counsel for Pino Tree Service Inc., Jeffrey S. Shinbrot;
- g. Counsel for Bank of the Sierra, Jessica L. Giannetta; and
- h. Counsel for PNC Bank, N.A., Michael B. Lubic.

3. To the best of the United States Trustee's knowledge, the Examiner's connections with the Debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United States Trustee, and persons employed in the Office of the United States Trustee, are limited to the connections set forth in the Declaration of Don Fife filed in support of this Application.

WHEREFORE, the United States Trustee requests that the Court enter an Order Approving Appointment of Don Fife as Examiner in the above-captioned case.

Dated: March 18, 2025

/s/ Kenneth M. Miskin

Kenneth M. Miskin

Assistant United States Trustee

DONALD T. FIFE
HAHN FIFE & COMPANY, LLP
1055 EAST COLORADO BLVD., 5TH FLOOR
PASADENA, CA 91106
(626) 792-0855 PHONE
(626) 270-5701 FAX

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

) Case No. 8:24-bk-12674-TA

) Chapter 11 Proceeding

THE ORIGINAL MOWBAY'S TREE
SERVICE, INC., a DELAWARE corporation

Debtor and

Debtor-in-Possession

DECLARATION OF DONALD T. FIFE

I, Donald T. Fife, declare that:

1. I am the proposed Chapter 11 Examiner in the case of The Original Mowbay's Tree Service, Inc, a Delaware corporation, Case N0. 8:24-bk-12674-TA. I am the Managing Partner of Hahn Fife & Company, LLP, and, if called as a witness, I could and would competently testify to the matters set forth in this statement from my personal knowledge, unless otherwise stated.

1 2. For the past 35 years, my practice has been exclusively in bankruptcy or
2 bankruptcy related matters. I have been retained in all facets related to bankruptcy including
3 being retained by Chapter 7 Trustees, Chapter 11 Trustees, Chapter 11 Debtor-in-Possessions,
4 Secured Creditors, Unsecured Creditors, and Creditor Committees. I have been retained in all
5 divisions of the Central District of California as well as divisions of the Northern, Central and
6 Southern Divisions of California. I have also been retained in the States of Hawaii, Arizona
7 and Nevada and in the California Superior Court.

8 3. I have been retained as the Accountant and Expert in many types of businesses
9 and industries including construction, real estate developers, security firms, contractors,
10 entertainers, legal and accounting professionals, hospitals, health care organizations, non-
11 profits, among several others. In many of these cases I have been retained to perform forensic
12 analysis, solvency analysis, substantive consolidation analysis (both in support of and against),
13 and to provide Expert Reports identifying my work and conclusions.

14 4. My prior experience in these matters includes:

15 5. In re Philmare Care LLC, Case No.6:18-bk-20286-SY, I was retained by the
16 Chapter 7 Trustee to review and analyze certain transactions between the Debtor and related
17 parties. I first compiled all the related transactions from the Debtor's records that were
18 provided. From this information, I analyzed how the transactions were treated by the Debtor
19 and the related entity (i.e. as loans or services). I further analyzed if reasonably equivalent
20 value was provided for the consideration received. Based on the work performed, I prepared
21 and Expert Report describing the analysis with the data reviewed and my conclusions reached.
22 An eventual settlement was entered into with the Related Parties.

23 6. In re Esco LLC, Case No. 8:05-bk-10035-ER, I was retained by the Chapter 7
24 Trustee as the Accountant and eventual Expert. In this case, the Debtor was a 100% owner of
25 the three subsidiaries who were also in bankruptcy. Counsel for the Chapter 7 Trustee
26 requested that I perform a Substantive Consolidation analysis for the Debtor and the three
27 subsidiaries.
28

1 7. As part of the engagement for the services described in paragraph 6 above, I
2 analyzed the Debtor and the Subsidiaries' corporate structure including the Officers and
3 Directors for each entity. I also analyzed and interviewed several employees to gain an
4 understanding of which entity they were providing services for and if they were providing
5 services for multiple entities, how their salaries were allocated and charged to each entity. I
6 also examined the Debtor and its Subsidiaries contracts and insurance coverage to ascertain if
7 employees who performed worked for a certain entity were also insured by that entity (i.e.,
8 workers compensation and health insurance). All payments between the Debtor and the
9 Subsidiaries were also analyzed and quantified to ascertain if reasonably equivalent value was
10 provided for consideration paid.

11 8. In addition to the services described in paragraphs 6 and 7, Hahn Fife prepared an
12 Expert Report identifying all the issues reviewed and concluded that the Debtor and its
13 subsidiaries should be Substantively Consolidated. The Court eventually Substantively
14 Consolidated the Debtor and its Subsidiaries.

15 9. In many of the cases where Hahn Fife is retained, particularly in cases where
16 Hahn Fife is retained by Chapter 7 Trustee's, Hahn Fife is asked to look at and opine on
17 potential fraudulent conveyances and preference payments as well as Substantive
18 Consolidation issues.

19 10. I have a Bachelor of Science Degree with an Emphasis in Accounting from
20 California State University at Los Angeles and I am a Certified Public Accountant licensed to
21 practice in the State of California.

22 11. I have reviewed the statement of financial affairs, schedules and the claims docket
23 in the case, and have determined that I do not hold any interest adverse to the estate, and that I
24 am a disinterested person as defined in 11 U.S.C. Section 101(14). As set forth herein, I do not
25 represent any other entity having an adverse interest in connection with the Debtor's case, nor
26 do I have any adverse interest in this matter. I am not a creditor, equity security holder or an
27 insider of the Debtor. Neither I, nor any of my staff is or has ever been a director, officer, of
28 employee of the Debtor at any time.

1 12. I have reviewed my client list and the list of creditors provided by the Debtor in
2 the Debtor's Voluntary Petition and do not believe that any of my current representations pose
3 an adverse interest in connection with this case, or disqualify me from being appointed.

4 13. To the best of my knowledge, I have no connections with the Debtor, the Debtor's
5 creditors, the Debtor's -affiliates Pino Tree Services, Inc., Mowbray Waterman Property, LLC,
6 and Phoenix Traffic Management, Inc., or any party in interest, or their respective attorneys
7 and accountants.

8 14. I have no connection with any of the employees of the Santa Ana office of the
9 United States Trustee for Region 16.

10 15. I sometimes attend social functions with bankruptcy professionals who may be
11 currently involved in this case, or who may become involved in the case.

12 16. I will update the Court if any subsequent connections come to light.

13 17. I am not a professional person as defined in 11 U.S.C. Section 327 and do not
14 intend to hire myself or my firm in this case.

15 18. Any independent contractors hired by me for this case will first undergo a conflict
16 check the results of which I will provide to the Court.

17 19. My standard hourly rate as of this date is as follows:

- 18 a. Donald T. Fife \$530.00
19 b. Wesley Nutten \$450.00
20 c. Professional Staff \$90 - \$300

21 20. I will also bill the estate for reasonable out of pocket expenses such as mail,
22 printing and reproduction, and fax charges, subject to Bankruptcy Court approval. I agree to
23 file notice of any proposed rate increase.

24 21. If I hire legal counsel, I will insure they perform conflict checks and that their rates
25 are commensurate with rates charged in the Orange County region. I will confirm they are
26 familiar with the UST's guidelines for larger Chapter 11 cases and would comply with the
27 same, by, among other things, showing that their blended hourly work on the case is
28 comparable with the market, presenting billing records in searchable format, providing notice

1 of rate increase after the engagement has commenced, and as needed, providing a budget up
2 front for various projects.

3 22. I understand and acknowledge that:

- 4 a. I must comply with the Bankruptcy Code and Bankruptcy Rules, including
5 that retention and compensation of professionals must be approved by the
6 Court. I further agree that the application for employment of any and all
7 professionals will be set on notice and hearing and service will comply with
8 local rules:
- 9 b. The UST expects compliance with the UST's applicable guidelines, Chapter
10 11 Trustee handbook and other guidance with the UST, including periodic
11 reports;
- 12 c. I understand compensation is subject to Section 330 of the Bankruptcy Code.
13

14 I declare under penalty of perjury that the foregoing is true and correct. Executed on March 17,
15 2025, at Pasadena, California.

16 
17 _____
18 DONALD T. FIFE
19 HAHN FIFE & COMPANY LLP
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

411 West Fourth Street, Suite 7160, Santa Ana, CA 92701

A true and correct copy of the foregoing document entitled (*specify*):

APPLICATION FOR ORDER APPROVING APPOINTMENT OF EXAMINER

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **March 18, 2025**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On (date) **March 18, 2025**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **March 18, 2025**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST (IF APPLICABLE)

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 18, 2025
Date

Queenie Ng
Print Name

/s/ Queenie Ng
Signature

ADDITIONAL SERVICE INFORMATION

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

| <u>Name</u> | <u>Capacity</u> | <u>Email Address</u> |
|----------------------|----------------------------|--|
| Amitkumar Sharma | Ally Bank | amit.sharma@aisinfo.com |
| Marshall Goldberg | Altec Capital | mgoldberg@glassgoldberg.com |
| Alan Hochheiser | AmTrust North America | ahochheiser@mauricewutscher.com |
| Sharon Weiss | Bank of America, N.A. | sharon.weiss@bclplaw.com |
| Jessica Giannetta | Bank of the Sierra | jessica@giannettaenrico.com |
| Mandy Youngblood | | csbk@gmfinancial.com |
| Kenneth Catanzarite | | kcatanzarite@catanzarite.com |
| Raffi Khatchadourian | | raffi@hemar-rousso.com |
| Thomas Shuck | Pathward, N.A. | tshuck@pmcos.com |
| Roye Zur | Mowbray Waterman | rzur@elkinskalt.com |
| Amitkumar Sharma | Ford Motor Credit | amit.sharma@aisinfo.com |
| Donald Reid | Ana Lidia Gomez | don@donreidlaw.com |
| Ahren Tiller | | ahren.tiller@blc-sd.com |
| Valery Loumber | Guifen He & Ping Liu | valloumlegal@gmail.com |
| James MacLeod | John Deere Construction | jmacleod@dunninglaw.com |
| Kenneth Catanzarite | Ronnie Jordan | kcatanzarite@catanzarite.com |
| Estela Pino | Pamela Metcalf-Kunellis | epino@epinolaw.com |
| Michael Lubic | PNC Bank, N.A. | michael.lubic@klgates.com |
| Roye Zur | Phoenix Traffic Management | rzur@elkinskalt.com |
| Jeffrey Shinbrot | Pino Tree Service Inc. | jeffrey@shinbrotfirm.com |
| Donald Reid | Jaime Rodriguez | don@donreidlaw.com |
| David Meadows | Southern California Edison | david@davidwmeadowslaw.com |
| Robert Marticello | Debtor's Attorney | rmarticello@raineslaw.com |
| Michael Simon | | msimon@raineslaw.com |

SEE NEF FOR CONFIRMATION OF ELECTRONIC TRANSMISSION TO THE U.S. TRUSTEE AND ANY TRUSTEE IN THIS CASE, AND TO ANY ATTORNEYS WHO RECEIVE SERVICE BY NEF.

2. SERVED BY U.S. MAIL

Debtor:

The Original Mowbray's Tree Service, Inc.

Brian Weiss, CRO
c/o Force Ten Partners, LLC
5271 California Ave. Suite 270
Irvine, CA 92617

Grobstein Teeple LLP

23832 Rockfield Blvd Ste 245
Lake Forest, CA 92630

Hilco Valuation Services LLC

Attn: Eric Kaup, EVP, CCO
5 Revere Dr, Ste 300
Northbrook, IL 60062

3. **SERVED BY (state method for each person served):**

PERSONAL DELIVERY, FACSIMILE OR EMAIL

Judge's Copy

Honorable Theodor Albert – bin on the 5th Floor